

ESTTA Tracking number: **ESTTA200920**

Filing date: **03/26/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Sensible Foods LLC
Granted to Date of previous extension	03/26/2008
Address	P.O. Box 750832 Petaluma, CA 94975 UNITED STATES
Correspondence information	David Baxes CEO Sensible Foods LLC P.O. Box 750832 Petaluma, CA 94975 UNITED STATES db@sensiblefoods.com Phone:707 769-0170

Applicant Information

Application No	77143334	Publication date	11/27/2007
Opposition Filing Date	03/26/2008	Opposition Period Ends	03/26/2008
Applicant	CONAGRA FOODS RDM, INC. ONE CONAGRA DRIVE OMAHA, NE 68102 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: cocoa mixes; puddings
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3252283	Application Date	10/14/2004
Registration Date	06/12/2007	Foreign Priority Date	NONE
Word Mark	SENSIBLE FOODS		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 016. First use: First Use: 2006/10/26 First Use In Commerce: 2006/10/26 Magazines, leaflets, brochures, and newsletters featuring food, health and nutrition; catalogs featuring food, snacks, nutritional supplements, and general nutritional products

U.S. Registration No.	3024683	Application Date	04/15/2004
Registration Date	12/06/2005	Foreign Priority Date	NONE
Word Mark	SENSIBLE FOODS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1996/12/17 First Use In Commerce: 1997/04/08 Dried Fruits, Dried Vegetables		

U.S. Registration No.	2861273	Application Date	05/01/2002
Registration Date	07/06/2004	Foreign Priority Date	NONE
Word Mark	SENSIBLE FOODS		
Design Mark			
Description of Mark	The design portion of the mark depicts an ear of corn, a strawberry, two blueberries, a mango, a pineapple and a cherry.		
Goods/Services	Class 029. First use: First Use: 1996/12/17 First Use In Commerce: 1997/04/08 Dried fruit snacks		

U.S. Registration No.	3383121	Application Date	03/02/2006
Registration Date	02/12/2008	Foreign Priority Date	NONE
Word Mark	SNACKS MADE SENSIBLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2006/02/01 First Use In Commerce: 2006/06/01 Dehydrated fruit snacks; Dried fruit mixes; Dried fruits; Dried soybeans; Dried vegetables; Fruit-based snack food; Vegetable-based snack foods		

U.S. Application No.	77178357	Application Date	05/11/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SENSIBLE BABY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: Dried fruits; Dried vegetables; Processed fruits; Processed vegetables		

Attachments	78499792#TMSN.jpeg (1 page)(bytes) 78402771#TMSN.jpeg (1 page)(bytes) 78125557#TMSN.gif (1 page)(bytes) 78827662#TMSN.jpeg (1 page)(bytes) 77178357#TMSN.jpeg (1 page)(bytes) Notice of Opposition_JULIA.pdf (5 pages)(29201 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/David Baxes/
Name	David Baxes
Date	03/26/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<p>Sensible Foods, LLC,</p> <p style="text-align:center">Opposer,</p> <p>vs.</p> <p>ConAgra RDM, Inc.,</p> <p style="text-align:center">Applicant.</p>	<p>In Re: Serial No. 77/143334 for the mark SENSIBLE SWEETS published on November 27, 2007</p> <p>TTAB Proceeding No.: _____</p> <p>NOTICE OF OPPOSITION</p>
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NOTICE OF OPPOSITION

Sensible Foods, LLC, a California limited liability company, whose current address is P.O. Box 750832, Petaluma, CA, 94975 (hereinafter “Opposer”), believes it will be damaged by the registration of the mark shown in Application Serial No. 77/143334, submitted by ConAgra Foods RDM, Inc. (hereinafter “Applicant”) and hereby opposes the same.

As grounds for the opposition, it is alleged that:

1. Opposer is the owner of Registration No. 2,861, 273 for the word mark and design SENSIBLE FOODS for goods in class 29, “dried fruit snacks” with a first use in commerce date at least as early as April 4, 1997 and a first use date at least as early as December 17, 1996.
2. Opposer is the owner of Registration No. 3,024,683 for the mark SENSIBLE FOODS for goods in class 29, “dried fruits, dried vegetables” with a first use in commerce date at least as early as April 8, 1997 and a first use date at least as early as December 17, 1996.

3. Opposer is the owner of Registration No. 3,252,283 for the mark SENSIBLE FOODS for goods in class 16 “magazines, leaflets, brochures, and newsletters featuring food, health and nutrition; catalogs featuring food, snacks, nutritional supplements, and general nutritional products” with a first use in commerce date and first use date at least as early as October 26, 2006.
4. Opposer is the owner of Registration No. 3,383,121 for the mark SNACKS MADE SENSIBLE for goods in class 29 “dehydrated fruit snacks, dried fruit mixes, dried fruits, dried soybeans, dried vegetables, fruit-based snack food; vegetable-based snack foods” with a first use in commerce date at least as early as June 1, 2006 and a first use date of February 1, 2006.
5. On May 11, 2007, Opposer submitted Application Serial No. 77/178357 based on intent to use the mark SENSIBLE BABY for goods in class 29 “dried fruits, dried vegetables; processed fruits; processed vegetables.”
6. Opposer has established valuable statutory and common law rights in SENSIBLE FOODS registered marks, along with extensive good will in connection with the use of the marks on Opposer’s fruit and vegetable snack products. Opposer’s ownership of these valid marks establishes Opposer’s exclusive right to use these marks on goods in commerce.
7. Opposer has extensively advertised and promoted its products under SENSIBLE FOODS marks through various channels of trade. The customers and members of the consuming public have come to identify Opposer’s goods under the SENSIBLE FOODS marks.

8. Upon information and belief, Applicant on March 29, 2007 filed an application for registration of the proposed trademark SENSIBLE SWEETS for goods in class 30 mainly “cocoa mixes; puddings” based on an Applicant’s alleged intent to use the mark in commerce.
9. Upon information and belief, Applicant has not used the mark SENSIBLE SWEETS in the United States prior to the March 29, 2007 filing date of its application.
10. Upon information and belief, Applicant has no common law trademark rights in the mark SENSIBLE SWEETS in the United States at the time Applicant filed its application for the mark SENSIBLE SWEETS.
11. Upon information and belief, Applicant has no common law trademark rights in the mark SENSIBLE SWEETS in the United States as of May 1, 2002, the filing date of Opposer’s Registration No. 2,861,273 for the mark SENSIBLE FOODS.
12. Upon information and belief, Applicant’s mark is substantially similar to Opposer’s marks, when applied to the same or similar goods, as identified in Applicant’s application, and will likely cause confusion or mistake by the consuming public.
13. Upon information and belief, the goods identified in Applicant’s application are similar and/or related to the goods sold by Opposer. Additionally, the goods will likely be sold in the same channels of commerce and to the same class of purchasers. Therefore, giving rise to the belief that consumers will be

confused and believe Applicant's goods to be directly or indirectly associated with Opposer.

14. For the foregoing reasons, due to the overlapping nature of goods and the similarity of marks, Opposer alleges that Applicant's mark SENSIBLE SWEETS will cause confusion, injure, or damage Opposer within the meaning of Sections 2(d) of the Trademark Act of 1946, as amended (15 USC §1052 (d)) and 13 of the Trademark Act of 1946, as amended (15 USC §1063(a)) and diminish the value and source of identifying power of Opposer's SENSIBLE FOODS trademarks.

Wherefore, Opposer respectfully prays that this Notice of Opposition be sustained and the registration of Application Serial No. 77/143334 for the mark SENSIBLE SWEETS be denied.

Respectfully submitted,

/David Baxes/
David Baxes
CEO of Opposer
Sensible Foods, LLC

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CERTIFICATE OF ELECTRONIC FILING

I certify that this document is being filed electronically with ESTTA procedures of the Trademark Trial and Appeal Board on March 26, 2008.

Dated: March 26, 2008

/David Baxes/
David Baxes

CERTIFICATE OF SERVICE BY US MAIL

I certify that on March 26, 2008, I caused the foregoing NOTICE OF OPPOSITION to application Serial No. 77/143334 to be served by U.S. Mail in a postage prepaid envelope, to this address:

Christopher M. Bikus
McGrath North Mullin & Kratz, PC LLO
First National Tower, Suite 3700
1601 Dodge Street
Omaha, NE 68102

Dated: March 26, 2008

/David Baxes/
David Baxes